

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN DEWAYNE TAYLOR, JR.,

Plaintiff,

v.

AMBER ROBBINS, et al.,

Defendants.

CASE NO. 2:25-cv-00582-RSL-DWC

ORDER DECLINING TO SERVE
COMPLAINT

Plaintiff Kevin Dewayne Taylor, Jr., proceeding *pro se* and *in forma pauperis*, filed this civil rights action under 42 U.S.C. § 1983. Dkts. 4, 5. Having reviewed and screened Plaintiff's complaint under 28 U.S.C. § 1915A, the Court declines to serve the complaint but provides Plaintiff leave to file an amended pleading by May 15, 2025, to cure the deficiencies identified herein.

I. BACKGROUND

Plaintiff, a pretrial detainee currently confined at King County Regional Justice Center ("KCRJC"), initiated this action concerning various conditions of confinement at that facility. Dkt. 5. Plaintiff organizes his claims into three counts. In Count I, Plaintiff alleges his Fourteenth

1 Amendment rights to equal protection and due process were violated when a female correctional
2 officer allegedly engaged in gender discrimination by incorrectly reporting that Plaintiff was
3 disruptive and failed to follow instructions in the KCRJC cafeteria. *Id.* at 9–12. In addition,
4 Plaintiff alleges a violation of equal protection based on the lack of constant video surveillance
5 in all areas of KCRJC. *Id.* at 12–15. Plaintiff also asserts a due process claim in Count II,
6 alleging he was placed in isolated housing for three days without a hearing or adequate
7 opportunity to be heard. *Id.* at 16–20. Finally, in Count III, Plaintiff alleges his First Amendment
8 rights were violated when, in various circumstances, KCRJC correctional officers “could” read
9 Plaintiff’s legal mail and legal documents. *Id.* at 18, 21–27.

10 Plaintiff names twenty individuals as defendants in this action and represents that each is
11 an employee or officer at KCRJC: Amber Robbins (jail official), Gill (sergeant), Allen Nance
12 (director), C Frazier (major), Michael Taylor (major), Steve Larsen (deputy director), Jennifer
13 Albright (deputy director), Manny (commander), Currier (sergeant), Oreke (jail official), B
14 Lathan (jail official), B Lassiter (jail official), Andrea Williams (mailroom supervisor), Graves
15 (sergeant), Jasim (jail official), Hamman (jail official), LaCousier (jail official), Appling (jail
16 official), B Kipchumba (jail official), and M Badaru (jail official). *Id.* at 4–8. He seeks monetary
17 damages and injunctive relief for his claims. *Id.* at 28.

18 II. SCREENING STANDARD

19 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
20 complaints brought by prisoners seeking relief against a governmental entity or officer or
21 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
22 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
23 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
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1 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
2 152 F.3d 1193 (9th Cir. 1998).

3 The Court is required to liberally construe *pro se* documents. *Estelle v. Gamble*, 429 U.S.
4 97, 106 (1976). However, the pleadings must raise the right to relief beyond the speculative level
5 and must provide “more than labels and conclusions, and a formulaic recitation of the elements
6 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing
7 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

8 III. DISCUSSION

9 Upon review, the Court finds several deficiencies in the complaint. To begin, it is unclear
10 whether Plaintiff is suing defendants in their individual or official capacities. However, under
11 either construction, his complaint is deficient and must be cured before he may proceed in this
12 action.

13 A. Individual Capacity § 1983 Claims

14 To proceed under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a violation of
15 rights protected by the Constitution or created by federal statute, and (2) the violation was
16 proximately caused by a “person” acting under color of state law. *See Crumpton v. Gates*, 947
17 F.2d 1418, 1420 (9th Cir. 1991). Thus, the first step in pleading an individual capacity § 1983
18 claim is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510
19 U.S. 266, 271 (1994). On step two, a plaintiff must allege facts showing how an individual
20 defendant caused, or personally participated in causing, the harm alleged in the complaint. *See*
21 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

22 Plaintiff’s individual capacity § 1983 claims are deficient at both steps. At the first step,
23 Plaintiff has not plausibly alleged a violation of his Fourteenth Amendment rights to due process
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1 and equal protection or a violation of his First Amendment rights regarding legal mail. On step
2 two, Plaintiff does not sufficiently allege personal participation by Defendant Oreke, and, for the
3 majority of defendants, he attempts to impose liability based on their supervisory positions.

4 1. Procedural Due Process (Counts I and II)

5 First, Plaintiff does not plausibly allege a procedural due process violation by Defendants
6 Oreke or Gill in Counts I and II. Dkt. 5 at 9–20. To show a procedural due process violation
7 occurred, a plaintiff must allege two elements: (1) the deprivation of a constitutionally protected
8 liberty or property interest, and (2) the denial of adequate procedural protections. *McQuillion v.*
9 *Duncan*, 306 F.3d 895, 900 (9th Cir. 2002) (citing *Brewster v. Bd. of Educ. of Lynwood Unified*
10 *Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998)). A protected interest may arise directly from the
11 Constitution, “by reason of guarantees implicit in the word ‘liberty,’” or from “an expectation or
12 interest created by state laws or policies.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

13 For pretrial detainees, the due process clause of the Fourteenth Amendment prohibits
14 restrictions on liberty that amount to punishment prior to an adjudication of guilt. *Bell v. Wolfish*,
15 441 U.S. 520, 535–37 (1979). To determine whether a restriction constitutes punishment, courts
16 consider whether the restriction caused a significant hardship or disability compared to the
17 ordinary conditions of confinement and whether it was imposed for a legitimate nonpunitive
18 purpose rather than to punish. *See Block v. Rutherford*, 468 U.S. 576, 584–85 (1984); *Kingsley v.*
19 *Hendrickson*, 576 U.S. 389, 398–99 (2015). While convicted prisoners must demonstrate that a
20 restriction imposes an atypical and significant hardship under *Sandin v. Conner*, 515 U.S. 472,
21 484 (1995), the Ninth Circuit has held that pretrial detainees may have a broader liberty interest
22 in avoiding punitive or excessive restrictions without due process. *See Mitchell v. Dupnik*, 75
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1 F.3d 517, 523–25 (9th Cir. 1996); *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1205–06 (9th Cir.
2 2008).

3 Not every inconvenience or restriction during pretrial detention amounts to punishment
4 or requires procedural protections as a matter of federal constitutional law. *Bell*, 441 U.S. at 537.
5 Minor restrictions or temporary, short-term losses of privileges are considered *de minimis* and do
6 not rise to the level of constitutional violations. *Id.* at 539 n.21; *Peyton v. Cnty. of Ventura*, No.
7 17-cv-3202-VAP-AJW, 2017 WL 6816355, at *2–3 (C.D. Cal. Aug. 23, 2017), *report and*
8 *recommendation adopted by* 2018 WL 317791 (C.D. Cal. Jan. 3, 2018). In other words,
9 procedural due process protections, such as an opportunity to be heard, are triggered only where
10 the restriction is sufficiently severe, excessive, or punitive in nature. *See Demery v. Arpaio*, 378
11 F.3d 1020, 1028 (9th Cir. 2004).

12 In Count I, Plaintiff alleges Defendant Oreke violated his due process rights by failing to “call a
13 code” when she incorrectly reported Plaintiff was being disruptive and not following instructions
14 in the cafeteria. Dkt. 5 at 12–13. But failure to follow internal procedures or falsely reporting
15 misconduct, without more, does not amount to a procedural due process violation by Defendant
16 Oreke. *See Paul v. Davis*, 424 U.S. 693 (1976) (holding government action that harms an
17 individual’s reputation, but does not deprive them of liberty or property, does not implicate the
18 Due Process Clause). Although Plaintiff alleges in Count II that he was placed in isolated
19 housing after Defendant Oreke made her report and was not provided a hearing regarding that
20 placement, he does not allege sufficient facts demonstrating Defendant Oreke was personally
21 involved in denying Plaintiff procedural protections such as an opportunity to be heard. *Id.* at 16,
22 18–20; *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on
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1 individual defendant under § 1983 only if plaintiff can show that defendant proximately caused
2 deprivation of federally protected right).

3 Next, in Count II, Plaintiff also alleges Defendant Gill violated his due process rights
4 when he “left [Plaintiff] in isolated housing...for 3 days without a hearing.” Dkt. 5 at 16, 18.
5 However, Plaintiff’s complaint does not provide enough detail to determine whether his
6 placement in isolated housing was a sufficiently severe, excessive, or punitive restriction to
7 trigger procedural due process protections. In particular, the complaint does not describe what
8 “isolated housing” entails or what specific restrictions Plaintiff suffered while there, and courts
9 have consistently held that temporary and minor restrictions do not constitute constitutional
10 violations. *See Peyton*, 2017 WL 6816355, at *2–3 (collecting cases).

11 In addition, it is not clear whether Plaintiff alleges he was placed in isolated housing for a
12 *total* of three days without hearing or if he was in isolated housing for three days *before* a
13 hearing was provided. *See generally Palmer v. Santa Cruz Sheriff’s Dep’t*, No. 19-CV-04629-
14 EMC, 2020 WL 264336, at *3 (N.D. Cal. Jan. 17, 2020) (noting that inmates are entitled to “an
15 informal nonadversary hearing within a reasonable time” after being placed in administrative
16 segregation). Without clear allegations demonstrating the duration of Plaintiff’s placement in
17 isolated housing and what procedural protections—if any—he received regarding that placement,
18 Plaintiff has failed to plausibly allege a procedural due process violation.

19 Finally, the complaint does not indicate the reason given for Plaintiff’s placement in
20 isolated housing as required to show whether the restriction was imposed as punishment or as an
21 incident of a legitimate governmental purpose. This distinction is critical because the procedural
22 protections owed to pretrial detainees largely depends on the purpose for the restriction. *See*
23 *Block*, 468 U.S. at 584–85; *Mitchell*, 75 F.3d at 522–25; *Demery*, 378 F.3d at 1028–29; *see also*
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1 *Palmer*, 2020 WL 264336, at *3 (discussing procedural protections for administrative and
2 punitive segregation). Without more information, Plaintiff has failed to show whether his
3 temporary placement in isolated housing without a hearing was punitive in nature or merely an
4 administrative measure within Defendant Gill’s discretion. *Stevenson v. Jones*, 254 F. Supp. 3d
5 1080, 1093 (N.D. Cal. 2017) (“For example, jailers ‘must be able to take steps to maintain
6 security and order’ at the jail, so restraints that are reasonably related to these goals are not,
7 without more, unconstitutional punishment.”) (quoting *Bell*, 441 U.S. at 540).

8 In any amended pleadings, Plaintiff should include a due process claim only if he can
9 allege facts showing that his placement in isolated housing imposed a sufficiently serious or
10 punitive restriction to trigger constitutional protections, and that he was denied the procedural
11 safeguards required under the Fourteenth Amendment. Plaintiff must provide sufficient detail
12 about the conditions of isolated housing, the duration of his placement in isolated housing,
13 whether (and when) he received notice or hearing for that restriction, and the stated reason for
14 the restriction. Further, Plaintiff should only name individuals as defendants if he can allege
15 specific facts demonstrating their personal participation in the alleged denial of procedural due
16 process.

17 2. Equal Protection (Count I)

18 Plaintiff also fails to plausibly allege a violation of his rights under the Equal Protection
19 Clause of the Fourteenth Amendment in Count I. The Equal Protection Clause “is essentially a
20 direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v.*
21 *Cleburne Living Center*, 473 U.S. 432, 439 (1985). Allegations of different or inconsistent
22 treatment are not enough to demonstrate a violation of equal protection. *Griffin v. County Sch.*
23 *Bd. of Prince Edward County*, 377 U.S. 218, 230 (1964). To state an equal protection claim, a
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1 plaintiff must plausibly allege that a defendant acted with an intent or purpose to discriminate
2 against him based on his membership to a protected class. *See Furnace v. Sullivan*, 705 F.3d
3 1021, 1030 (9th Cir. 2013) (quotations and citations omitted). Mere speculation about a
4 discriminatory motive, without supporting factual allegations, does not satisfy this standard.
5 *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009) (rejecting conclusory allegations of
6 discriminatory intent).

7 Plaintiff first alleges Defendant Oreke, who is a woman, engaged in unlawful gender
8 discrimination by making an inaccurate report about Plaintiff’s misconduct in the cafeteria. Dkt.
9 5 at 9, 11–12. Plaintiff alleges Defendant Oreke acted with discriminatory animus because “I’m a
10 man and she’s a woman....” *Id.* at 12. This conclusory allegation is insufficient to show
11 Defendant Oreke engaged in unconstitutional gender discrimination in violation of Plaintiff’s
12 right to equal protection. Any equal protection claim must put forth sufficient facts
13 demonstrating that Defendant Oreke acted with the purpose of discriminating against Plaintiff
14 because of his sex.

15 Although his allegations are not a portrait of clarity, Plaintiff also alleges an equal
16 protection violation because all areas of KCRJC are not covered by constant video surveillance.
17 *Id.* at 13–15, 29. To the extent Plaintiff alleges a violation of equal protection by way of video
18 surveillance, Plaintiff should reassert this claim in any amended pleadings only if he can
19 plausibly allege that a defendant acted with an intent or purpose to discriminate against him
20 based on his membership to a protected class.

21 3. First Amendment Legal Mail (Count III)

22 Plaintiff does not state a First Amendment violation based on his allegations about his
23 legal mail and legal documents in Count III. Specific restrictions on prisoner legal mail have
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1 been approved by the Supreme Court and Ninth Circuit. For example, prison officials may
2 require legal mail from attorneys be identified as such and open such mail in the presence of the
3 prisoner for visual inspection. *See Wolff v. McDonnell*, 418 U.S. 539, 576–77 (1974); *Sherman v.*
4 *MacDougall*, 656 F.2d 527, 528 (9th Cir. 1981). Incoming mail from the prisoner’s attorney is
5 considered “legal mail,” but incoming mail from the courts is not “legal mail.” *See Keenan v.*
6 *Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996). Whether legal mail may be opened outside the
7 inmate’s presence, however, is an open question in the Ninth Circuit. *See Sherman*, 656 F.2d at
8 528; *cf. Mann v. Adams*, 846 F.2d 589, 590–91 (9th Cir. 1988) (per curiam) (concluding mail
9 from public agencies, public officials, civil rights groups, and news media may be opened
10 outside the prisoner’s presence in light of security concerns). Even so, the Ninth Circuit has held
11 an isolated instance or occasional opening of legal mail outside an inmate’s presence does not
12 rise to the level of a constitutional violation. *See Stevenson v. Koskey*, 877 F.2d 1435, 1441 (9th
13 Cir. 1989).

14 Here, Plaintiff does not allege any legal mail was opened outside his presence. Instead, he
15 recounts several circumstances where KCRJC staff could have read his legal mail or legal
16 documents, including during visual inspections of incoming mail, cell searches, and
17 transportation to and from KCRJC. Dkt. 5 at 18, 21–27. Plaintiff’s mere speculation that various
18 defendants may have read his legal mail or legal documents does not establish a First
19 Amendment violation.

20 4. Supervisory Liability (All Counts)

21 In every count, Plaintiff seeks to hold numerous defendants liable based on their
22 supervisory positions. However, § 1983 claims may not be brought on the theory a supervisor is
23 vicariously liable for the acts of his or her subordinates. *See Polk County v. Dodson*, 454 U.S.

312, 325 (1981); *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 691 (1978).

Rather, a plaintiff must show the supervisor (1) personally participated in or directed the alleged harm or (2) knew of a risk of harm to the plaintiff and failed to act to prevent it. *See Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998), *cert. denied*, 525 U.S. 1154 (1999). Sweeping conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d at 633.

Plaintiff alleges the following defendants are liable for the acts of their subordinates given their supervisory roles: Defendants Nance, Frazier, Taylor, Larsen, Albright, and Manny. Dkt. 5 at 9–27. But vicarious liability is not a viable legal theory for a § 1983 claim. As a result, Plaintiff's § 1983 claims against these supervisory defendants are deficient. In any amended pleadings, Plaintiff should only name an individual as a defendant if he can put forth sufficient facts demonstrating their personal participation in causing his alleged constitutional injuries. Sweeping allegations against all defendants will not suffice. Instead, Plaintiff must identify the way in which the actions or inactions of each defendant caused him a specific constitutional injury.

B. Official Capacity § 1983 Claims

Finally, to the extent Plaintiff asserts his § 1983 claims against defendants in their official capacities or against King County, those claims are deficient. Although not listed in the caption or in the defendant section of the complaint, Plaintiff lists King County as a defendant for each of his claims. In addition, King County is the real party in interest for any official capacity claim Plaintiff raises against King County officials and employees. *See Doe v. Lawrence Livermore Nat. Lab'y*, 131 F.3d 836, 839 (9th Cir. 1997) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)).

1 Plaintiff believes was violated; (2) the name of the person who violated the right; (3) exactly what
2 the individual did or failed to do; (4) how the action or inaction of the individual is connected to
3 the violation of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered
4 because of the individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each
5 claim for relief must be simple, concise, and direct.

6 Plaintiff shall present the amended complaint on the form provided by the Court. The
7 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same
8 case number, and it may not incorporate any part of the previous complaints by reference. The
9 amended complaint will act as a complete substitute for any previously filed complaint, and not as
10 a supplement. Plaintiff should not attach exhibits to the amended complaint and any exhibit will
11 not be considered as part of the amended complaint.

12 The Court will screen the amended complaint to determine whether it contains factual
13 allegations linking each defendant to the alleged violations of Plaintiff's rights. If Plaintiff fails to
14 file an amended complaint or fails to adequately address the issues raised herein on or before May
15 15, 2025, the undersigned will recommend dismissal.

16 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
17 civil rights complaint along with a copy of this Order.

18 Dated this 15th day of April, 2025.

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21 David W. Christel
22 United States Magistrate Judge
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